ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

The amendments adopt new rules requiring underground storage tank (UST) operator training, requiring closure investigations be conducted by a certified groundwater professional, amending the conflict of interest provisions for conducting compliance inspections, and piping leak detection requirements at unstaffed sites.

The Iowa Legislature passed legislation (2007 Iowa Acts, Senate File 499) granting rule making authority to the Environmental Protection Commission in response to provisions of the federal Energy Policy Act of 2005 (Federal Act). The Iowa legislation requires the Commission to adopt rules consistent with Environmental Protection Agency (EPA) guidance (see http:// www.epa.gov/OUST/index.htm) requiring underground storage tank operator training rules. (See Iowa Code section 455B.474(8)"a").

EPA guidance requires three classes of operators: Class A operators responsible for managing resources and personnel to achieve and maintain compliance; Class B operators responsible for implementing day-to-day aspects of operating, maintaining and recordkeeping for one or more facilities; and class C operators who are the on-site employees controlling or monitoring the dispensing of fuel and who are the first line of response to emergency conditions. One person can be more than one class of operator.

The rules provide responsibilities for each class of operator and criteria for training. The Department does not plan on providing training for operators, but will be approving training classes for Class A and B operators. The training will be provided by third parties or within a company's normal training of personnel. All training must be approved by the Department. The rules do allow for approval of on-line computer training that meets the requirements. Class C operators can be trained by the Class B operator.

Class A and B operators must be designated and trained by August 1, 2011. For Class C operators, written basic operating instructions, emergency contact names and phone numbers, and basic procedures specific to the facility are to be provided and they must receive some basic training within 6 months of the rule becoming effective.

The amendments to the conflict of interest provisions for compliance inspections are needed to meet the EPA guidance for inspections required in the Energy Policy Act. The Department's rules were adopted prior to the Act and EPA guidance. The EPA guidance does not allow compliance inspections to be conducted by licensed inspectors who are employees of the underground storage tank owner or operator. The change is required to continue receiving federal funding and EPA state program approval.

The rule change for piping leak detection at un-staffed facilities requires in-line leak detection to shut-off the submersible pump and stop product flow to the dispenser. In-line leak detection is for catastrophic leaks in pressurized product lines. They are generally designed to alert the on-site operator of a catastrophic release by slowing down product flow or activating an alarm so the submersible pump can be immediately shut down. When facilities are not staffed, there is no one available to respond to an alarm. At existing sites that operate unstaffed, this requirement must be met by June 1, 2010.

The amendments require a groundwater professional certified by the Department under 567--Chapter 134, Part A, conduct the soil and groundwater investigation required when underground storage tanks are permanently closed by removal or filling in place. The amendment gives the Department discretion to exempt this requirement if Department staff are able to provide direct supervision.

Any interested person may submit written comments on the proposed rule amendment on or before July 10, 2009. Written comments should be sent to the Iowa Department of Natural Resources, Attn. Paul Nelson, 502 E 9th St, Des Moines, Iowa 50319, fax (515)281-8895, or e-mail paul.nelson@dnr.iowa.gov.

Three public hearings will be held at 1 p.m. at the following locations at which time persons may present their views either orally or in writing.

Tuesday, July 7, 2009	Denison Public Meeting Room, 111 N. Main Street Denison, Iowa

Wednesday, July 8, 2009	Coralville Public Library Meeting Room B 1401 5th Street Coralville, Iowa
Thursday, July 9, 2009	Wallace State Office Building 5th Floor Conference Room 502 E. 9th Street Des Moines, Iowa

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 455B.474.

The following amendments are proposed.

ITEM 1. Amend rule 567–135.2(455B) by adopting the following **new** definitions in alphabetical order**:**

"*Class A operator*" means a person responsible for managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter. This includes ensuring appropriate individuals are trained in: the proper operation and maintenance of the underground storage tank system; the maintenance of all required records; procedures for response to emergencies caused by releases or spills; and assuring financial responsibility and documentation to the department or its representatives as required.

"*Class B operator*" means a person who implements applicable underground storage tank regulatory requirements and standards. This includes implementing the day-to-day aspects of operating, maintaining, and recordkeeping for underground storage tanks at one or more facilities. This individual typically monitors, maintains and ensures: release detection methods, recordkeeping and reporting requirements are met; release prevention equipment, recordkeeping and reporting requirements are met; all relevant equipment complies with performance standards; and appropriate individuals are trained to properly respond to emergencies caused by releases and spills.

"*Class C operator*" means an on-site employee who typically controls or monitors the dispensing or sale of regulated substances and who is the first-line of response to events indicating emergency conditions.

ITEM 2. Amend rule 567–135.4(455B) by adopting the following **new** subrules**:**

135.4(8) Requirement to have trained UST operators.

a. An owner or operator shall designate Class A, Class B, and Class C operators for each underground storage tank system or facility that has underground storage tanks regulated by the department, except for unstaffed facilities which may designate only Class A and B operators.

b. A facility may not operate after August 8, 2011, unless operators have been designated and trained as required in this rule, or unless otherwise agreed upon by the department based on a finding of good cause for failure to meet this requirement and a plan for designation and training at the earliest practicable date.

c. Trained operators must be readily available to respond to suspected or confirmed releases, equipment shut-offs or failures, and other unusual operating conditions.

d. The Class A or Class B operator should be immediately available for telephone consultation with the Class C operator when a facility is in operation. Class A or Class B operators should be able to be on site at the storage tank facility within four hours.

e. For staffed facilities, a Class C operator must be on site whenever the UST facility is in operation.

f. For unstaffed facilities, a Class B operator must be geographically located such that the person can be on site within two hours of being contacted by the public, the owner or operator of the facility, or the department. Emergency contact information and emergency procedures must be prominently displayed at the site. An unstaffed facility shall have an emergency shutoff device and a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, listing an emergency response telephone number to contact the Class B operator, and information on local emergency responders.

g. Designated operators must successfully complete required training under subrule 135.4(11) no later than August 8, 2011.

a. A person may be designated for more than one class of operator.

b. When a facility is found to be out of compliance, the department may require the owner and operator to re-train the designated UST system Class A, B, or C operator under a plan approved by the department. The re-training must occur within 60 days from departmental notice for Class A or B operators and within 15 days for Class C operators.

135.4(9) UST operator responsibilities.

a. *Class A operator*. Class A operators have the primary responsibility to operate and maintain the underground storage tank system and facility. The Class A operator's responsibilities include managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter in the following ways:

(1) Class A operators assist the owner by ensuring that underground tank systems are properly installed and expeditiously repaired and inspected; financial responsibility is maintained; and records of system

installation, modification, inspection and repair are retained and made available to the department and licensed compliance inspectors. The Class A operator shall properly respond to and report emergencies caused by releases or spills from UST systems; ensure the annual tank management fees are paid; and ensure that Class B and C operators are properly trained.

(2) Class A operators shall be familiar with training requirements for each class of operator and may provide required training for Class C operators.

(3) Class A operators shall provide site drawings that indicate equipment locations for Class B and Class C operators

(4) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class A operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class A operators pursuant to subrule 135.4(11) through 135.4 (13). Class A operators who are also licensed compliance inspectors under 567–Chapter 134, Part C, may perform in-house facility inspections of the UST system, but cannot perform department-mandated compliance inspections pursuant to rule 567–135.20(455B). Compliance inspections of an UST facility required by 567–135.20(455B) must be completed by a third-party compliance inspector licensed under 567--Chapter 134, Part B.

(5) A site undergoing a change in ownership shall designate a Class A operator prior to commencing operation. The Class A operator is responsible for ensuring all necessary documentation for change of ownership is completed and submitted to the department prior to bringing the UST system into operation.. If the USTs were temporarily closed or newly installed, and they are to be brought into operation, the Class A operator must ensure the department's checklist for returning an UST to service or initiating service is followed, and the necessary documentation is submitted to the department.

b. *Class B operator*. A Class B operator implements applicable underground storage tank regulatory requirements and standards in the field or at the tank facility. A Class B operator oversees and implements the day-to-day aspects of operation, maintenance, and recordkeeping for the underground storage tanks at facilities within four hours of travel time from the Class B operator's principle place of business. A Class B operator's responsibilities include, but are not limited to:

(1) Performing mandated system tests at required intervals and making sure spill prevention, overfill control equipment, and corrosion protection equipment are properly functioning;

(2) Assisting the owner by ensuring that release detection equipment is operational; release detection monitoring and tests are performed at the proper intervals; and release detection records are retained and made available to the department and compliance inspectors;

(3) Making sure recordkeeping and reporting requirements are met, and that relevant equipment manufacturer's or third-party performance standards are available and followed.

(4) Properly responding to, investigating, and reporting emergencies caused by releases or spills from USTs;

(5) Performing UST release detection in accordance with 567—135.5(455B);

(6) Monitoring the status of UST release detection;

(7) Meeting spill prevention, overfill prevention, and corrosion protection requirements;

(8) Reporting suspected and confirmed releases, and taking release prevention and response actions according to the requirements of 567—135.6(455B);

(9) Training and documenting Class C operators to make sure at least one Class C operator is on site during operating hours. Class B operators shall be familiar with Class C operator responsibilities, and may provide required training for Class C operators.

(10) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class B operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class B operators under subrules 135.4(11) through 135.4(13). Class B operators who are also licensed compliance inspectors under 567–Chapter 134, Part C, may perform in-house facility inspections of the UST system, but cannot perform department-mandated compliance inspections pursuant to rule 567–135.20(455B). Compliance inspections of an UST facility pursuant to 567–135.20(455B) must be completed by a third-party compliance inspector licensed under 567--Chapter 134, Part B.

(11) A site undergoing a change in ownership shall designate a Class B operator prior to commencing operation. The Class B operator must conduct an inspection using the department's inspection checklist and

submit the completed checklist along with change of ownership form prior to operation. If an UST system had been temporarily closed, the Class B operator shall ensure the department's checklist for returning an UST to service is followed and the necessary documentation is submitted to the department prior to operation of the UST system.

c. *Class C operator*. A Class C operator is an on-site employee who typically controls or monitors the dispensing or sale of regulated substances, and is the first to respond to events indicating emergency conditions. A Class C operator must be present at the facility at all times during normal operating hours. A Class C operator monitors product transfer operations to ensure that spills and overfills do not occur. The Class C operator must know how to properly respond to spills, overfills and alarms when they do occur. In the event of a spill, overfill or alarm, a Class C operator shall notify the Class A and Class B operators, as well as the department and appropriate local emergency authorities as required by rule.

(1) Within six months after the effective date of these rules, written basic operating instructions, emergency contact names and phone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site.

(2) There may be more than one Class C operator at a storage tank facility, but not all employees of a facility need be Class C operators.

135.4(10) UST operator training course requirements. Individuals must attend a department-approved training course covering material designated for each operator class. Individuals must attend every session of the training, take the examination, and attend examination review.

a. *Class A operators*. To be certified as a Class A operator, the applicant must successfully complete a department-approved training course that covers underground storage tank system requirements as outlined in 567--Chapter 134, 567--Chapter 135, and 567--Chapter 136. The course must also provide a general overview of the department's UST program, purpose, groundwater protection goals, public safety and administrative requirements. The training must include, but is not limited to, the following:

(1) Components and materials of underground storage tank systems.

(2) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.

(3) Spill and overfill prevention, to include the American Petroleum Institute (API) publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(4) Ensuring product delivery to the correct tank by using color-symbol codes in the API standard RP 1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals."

(5) Proper fuel ordering and delivery. Include procedures in API RP1007, "Loading and Unloading of MC/DOT 406 Cargo Tank Motor Vehicles."

(6) Release detection methods and related reporting requirements.

(7) Corrosion protection and inspection requirements, including the requirement to have a department-licensed cathodic protection tester.

(8) Discussion on the benefits of monthly or frequent inspections; and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

(9) Requirement and content of third-party compliance inspections.

(10) How to properly respond to an emergency, including hazardous conditions.

(11) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.

(12) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.

(1) (13) Notification of installation and storage tank registration requirements.

(14) Requirement to use department licensed companies and individuals for UST installation, testing, lining, and removal.

(15) Temporary and permanent closure procedures and requirements.

(16) NESHAP vapor recovery requirements.

(17) Conditions under which the department could stop fuel delivery and take enforcement action.

(18) Ensure that annual tank management fees are paid.

(19) Ensure that suspected and confirmed releases are investigated and reported according to subrule 135.6(1)

b. *Class B operators*. To be certified as a Class B operator, the individual must successfully complete a department approved training course that provides in-depth understanding of UST system regulations applicable to this class. Training must also provide a general overview of the department's UST program, purpose, groundwater protection goals, public safety and administrative requirements. Training shall cover the operation and maintenance requirements of this chapter, including, but not limited to, the following:

(1) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.

(2) Components and materials of underground storage tank systems.

(3) Spill and overfill prevention.

(4) Ensuring product delivery to the correct tank by using color-symbol codes in the API standard RP 1637.

(5) Proper fuel ordering and delivery, including procedures from API RP1007.

(6) Methods of release detection and related reporting requirements.

(7) Corrosion protection and related testing.

(8) Discussion on the benefits of monthly or frequent inspections; and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

(9) Requirement and content of third-party compliance inspections.

(10) Emergency response, reporting and investigating releases.

(11) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.

(12) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.

(13) Notification of installation and storage tank registration requirements.

(14) Requirement to use department-licensed companies and individuals for UST installation, testing, lining, and removal.

(15) Reporting and recordkeeping requirements.

(16) Overview of Class C operator training requirements.

(17) NESHAP vapor recovery requirements.

(18) Conditions under which the department could stop fuel delivery and take enforcement action.

b. *Class C operators*. To be certified as a Class C operator, an individual must complete a department-approved training course that covers, at a minimum, a general overview of the department's UST program and purpose; groundwater protection goals; public safety and administrative requirements; and action to be taken in response to an emergency condition due to a spill or release from an UST system. Training must include written procedures for the Class C operator, including notification instructions necessary in the event of emergency conditions. The written instructions and procedures must be readily available on site. A Class A or Class B operator may provide Class C training.

135.4(11) Examination and review requirement. Class A and B operators must complete the department-approved training course and take an exam to verify their understanding and knowledge. The examination may include both written and practical (hands-on) testing activities. The trainer must follow-up the exam with a review of missed test questions with the class or individual to ensure understanding of problem

areas. Upon successful completion of the training course, the applicant will receive a certificate verifying his or her status as a Class A, Class B, or Class C operator.

a. Reciprocity. The department may waive the training course for operators upon showing successful completion of a training course and examination approved by another state or regulatory agency that the department determines is substantially equivalent to the UST requirements contained in this chapter.

b. Transferability to another UST site. Class A and B operators may transfer to other UST facilities in Iowa provided they are properly designated by the facility owner as a Class A or B operator according to 567—134.4(13). Class A or B operators transferring from other states shall seek prior approval of training qualifications, unless the department has pre-approved the out-of-state program as substantially equivalent to the requirements of this chapter. .

135.4(12) Timing of UST operator training.

a. An owner shall ensure that Class A, Class B, and Class C operators are trained as soon as practicable after the effective date of these rules contingent upon availability of approved training providers, but not later than August 8, 2011, except as provided in 135.4(8)"b."

b. When a Class A or Class B operator is replaced, a new operator must be trained prior to assuming duties for that class of operator.

c. Class C operators must be trained before assuming duties of a Class C operator. Within six months after the effective date of these rules, written basic operating instructions, emergency contact names and phone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site. Class C operator may be briefed on these procedures concurrent with annual safety training required under Occupational Safety and Health Administration, 29 CFR, Part 1910.

135.4(13) Documentation of operator training.

a. The owner of an underground storage tank facility shall maintain a list of designated operators. The list shall be made available to the department in accordance with 135.4(5). The list shall represent the current Class A, Class B and Class C operators for the underground storage tank facility and must include:

(1) The name of each operator and the operator's class(s); contact information for the Class A and Class B operators; the date each operator successfully completed initial training and refresher training, if any; the name of the company providing the training; and the name of the trainer.

(2) For all classes of operators, the site(s) they are responsible for if more than one.

b. A copy of the certificates of training for Class A and Class B operators shall be on file and readily available for inspection in accordance with 135.4(5).

c. A copy of the certificates of training for Class B and Class C operators shall be conspicuously posted at each facility under their responsibility.

d. Class A and Class B operator contact information, including names and telephone numbers, and any emergency information, shall be conspicuously posted at unstaffed facilities near the dispensers and the station building.

ITEM 3. Amend subrule 135.5(1) by adopting the following **new** paragraph "e:"

e. UST sites with no on-site personnel.

(1) Piping in-line leak detectors must be used that shut off the submersible pump and stop product flow to the dispenser. At existing sites without an electronic line leak detector, the electronic line leak detector must be installed by June 1, 2010.

(2) At sites with containment basins and sump sensors for leak detection, the sump sensors must shut off product flow when a leak is detected.

ITEM 4. Rescind subrule 135.20(1) and adopt the following **new** rule:

135.20(1) The owner or operator must have the UST system inspected and an inspection report submitted to the department by an UST compliance inspector certified by the department under 567—Chapter 134. An initial compliance site inspection shall be conducted no later than December 31, 2007. All subsequent compliance site inspections conducted after the compliance inspection for the 2008-2009 biennial period shall

be conducted within 24 months of the prior site inspection. Compliance site inspections must be separated by at least six months.

ITEM 5. Amend rule 567–135.20(455B) by adopting the following **new** subrule:

135.20(4). Conflict of interest. A compliance inspection must be conducted by a certified compliance inspector who is not the owner or operator of the UST system being inspected, an employee of the owner or operator of the UST system being inspected or a person having daily on-site responsibility for the operation and maintenance of the UST system.

ITEM 6. Amend rule 567–134.14(455B) by adding the following **new** subrule:

134.14(6) Conflict of interest. A compliance inspector shall not conduct a compliance inspection if the compliance inspector is the owner or operator of the UST system, an employee of the owner or operator of the UST system or is a person having daily on-site responsibility for the operation and maintenance of the UST system.

ITEM 7. Amend subrule 135.15(3) as follows:

135.15(3) Assessing the site at closure or change-in-service.

a. Before permanent closure or a change-in-service is completed, owners or operators must measure for the presence of a release where contamination is most likely to be present at the UST site. This soil and groundwater closure investigation must be conducted by a certified groundwater professional licensed under 567—Chapter 134, Part A, unless the department in its discretion grants an exemption and provides direct supervision of the closure investigation. In selecting the sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release.

_____
Date

_____
Richard A. Leopold, Director

(P:135n.doc/mg)

Administrative Rule Fiscal Impact Statement

Date: April 24, 2009

Agency: Iowa Department of Natural Resources
IAC Citation: IAC 567—Chapter 135, Chapter 134
Agency Contact: Paul Nelson (281-8779)

Summary of the Rule: The amendments add new rules concerning underground storage tank operator training, changes to conflict of interest for conducting compliance inspections, and piping leak detection at unstaffed sites. Operator training identifies 3 types of operators. Class A operators are responsible for managing resources and personnel to achieve and maintain compliance. Class B operators are responsible for implementing day-to-day aspects of operating, maintaining and recordkeeping for one or more facilities. Class C operators are the on-site employees controlling or monitoring dispensing of fuel and are the first line of response to emergency conditions. One person can be more than one class of operator. The new rules provide responsibilities for each class of operator and criteria for training.

The conflict of interest change for third party compliance inspections requires a compliance inspection be conducted by a certified compliance inspector who is not the owner or operator of the UST system being inspected, an employee of the owner or operator of the UST system being inspected or a person having daily on-site responsibility for the operation and maintenance of the UST system.

The rule change for pressurized piping leak detection at un-staffed facilities requires in-line leak detection to shut off the submersible pump and stop product flow to the dispenser. Existing sites without this capability have until June 1, 2010 to meet the requirement.

The amendments also require that the soil and groundwater investigations required when UST systems are permanently closed by removal or filling in place be conducted by a groundwater professional certified by the Department under chapter 567 IAC 134, Part A. The amendment allows the Department the discretion to exempt this requirement at its discretion and if the Department staff are able to provide direct supervision.

Fill in this box if the impact meets these criteria:

___ No Fiscal Impact to the State.
_X_ Fiscal Impact of less than $100,000 annually or $500,000 over 5 years.
___ Fiscal Impact cannot be determined.

Brief Explanation: The cost to the state was based on the number of underground storage tank facilities owned by the state affected by the rule changes.

Fill in the form below if the impact does not fit the criteria above:

___ Fiscal Impact of $100,000 annually or $500,000 over 5 years.

* Fill in the rest of the Fiscal Impact Statement form.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	Year 1 (FY ____)	Year 2 (FY ____)
Revenue by Each Source:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
TOTAL REVENUE		
Expenditures:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		

TOTAL EXPENDITURES

NET IMPACT

___ This rule is required by State law or Federal mandate.
Please identify the state or federal law:

___ Funding has been provided for the rule change.
Please identify the amount provided and the funding source:

___ Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:

Fiscal impact to persons affected by the rule:

There will be additional costs to UST owners for formal training of their operators. The Petroleum Marketers and Convenient Stores of Iowa (PMCI) cost estimate for their program, which they said will be open to non-members, is approximately $500 per company.

UST sites that are now open without on-site staff and without catastrophic leak detection capable of shutting off the submersible pump will need to upgrade their in-line leak detector or stop operating when un-staffed. Depending on equipment at the site, the cost could be as low as $200 or up to $5,000+ for a typical 3 tank system. We do not know how many UST facilities operate unstaffed.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):

There will be additional costs to counties and local governments that own USTs. The Petroleum Marketers and Convenient Stores of Iowa (PMCI) cost estimate for their program, which they said will be open to non-members, is approximately $500 per company.

UST sites that are now open without on-site staff and without catastrophic leak detection capable of shutting off the submersible pump will need to upgrade their in-line leak detector or stop operating when un-staffed. Depending on equipment at the site, the cost could be as low as $200 or up to $5,000+ for a typical 3 tank system. We do not know how many UST facilities operate unstaffed.

* If additional explanation is needed, please attach extra pages.

Agency Representative preparing estimate: Paul Nelson
Telephone Number: 515-281-8779

NOTICE OF INTENDED ACTION
(Proposed Rule)

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ARC # _____
Style Approved: _____
Content Approved: _____

Agency & IAC Number: Environmental Protection [567]

IAC Chapter & Title Added or Amended: Ch. 135 – Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks

Statutory Designee With Rule-making Authority: Environmental Protection Commission

Contact Person: Paul Nelson

Phone: 1-8779

Date Approved by Designee: 5/19/09

Publication Date: 6/17/09

Date of Public Hearing (if any): 7/7/09

Deadline for Written Comment: 7/10/09

Summary of Rule/Rule Changes: The amendments add new rules concerning underground storage tank operator training, changes to conflict of interest for conducting compliance inspections, require soil and groundwater investigations when USTs are permanently closed be conducted by a groundwater professional certified by the Department, and requirements for piping leak detection at unstaffed sites.

Operator training identifies 3 types of operators. Class A operators are responsible for managing resources and personnel to achieve and maintain compliance. Class B operators are responsible for implementing day-to-day aspects of operating, maintaining and recordkeeping for one or more facilities. Class C operators are the on-site employees controlling or monitoring dispensing of fuel and are the first line of response to emergency conditions. One person can be more than one class of operator. The new rules provide responsibilities for each class of operator and criteria for training.

The conflict of interest change for third party compliance inspections requires the compliance inspection be conducted by a certified compliance inspector who is not the owner or operator of the UST system being inspected, an employee of the owner or operator of the UST system being inspected or a person having daily on-site responsibility for the operation and maintenance of the UST system.

The rule change for piping leak detection at un-staffed facilities requires in-line leak detection to shut off the submersible pump and stop product flow to the dispenser. At existing sites, this requirement must be met by June 1, 2010.

Reason for the Rule/Rule Changes: The Energy Policy Act of 2005 required states to adopt operator training and testing. EPA guidance requires three classes of operators. The conflict of interest for compliance inspections is needed to meet the EPA guidance for inspections required in the Energy Policy Act. The department's rules were adopted prior to the Act and EPA guidance. The change is required to continue receiving federal funding.
At unstaffed facilities there is no staff for in-line leak detector alarms to notify about a catastrophic release. Facility personnel are an integral part of release detection and stopping the release. The equipment was designed for staffed facilities and prior to the on-set of pay-at-the–pump which allows no staff present. To ensure proper soil and groundwater sampling at UST closures, licensed groundwater professionals are being required.

Effect of Rule Adoption/Change: (who, what, when, etc.) The operator rule changes will require all UST operators to meet training requirements by August 2011. Some UST owners and operators will be affected by the requirement to change equipment at some unmanned facilities. UST owners and operators will be required to contract with a certified groundwater professional to conduct tank closure sampling, although most sampling at UST closures is currently performed by groundwater professionals.

Is this change mandated by State or Federal Law? Yes.

Will anyone be affected by this rule change? If yes, what persons will be affected and will it be to the persons benefit or detriment? Yes. Owners of underground storage tanks will need to train their operators and require unstaffed sites to install a product line catastrophic leak detection device that shuts off product flow. They should see improved leak detection, release prevention and emergency response.

What are the potential benefits of this rule? Trained tank operators capable of maintaining proper operation of leak detection and release prevention equipment and responding to detected releases. Trained individuals have better and faster reporting and response to leaks for the protection of public and the environment. Reduced environmental damage and costs associated with releases.

What are the potential costs, to the regulated community or the State of Iowa as a whole, to this rule?
There will be additional costs to UST owners for formal training of their operators; this will include state agencies, counties and local governments that own USTs. The Petroleum Marketers and Convenient Stores of Iowa (PMCI) cost estimate for their program, which they said will be open to non-members, is approximately $500 per company. The DNR will have additional cost for staff time in oversight and enforcement of operator training program. UST sites that are now open without on-site staff and without catastrophic leak detection capable of shutting off the submersible pump will need to upgrade their in-line leak detector or stop operating when un-staffed. Depending on equipment at the site, the cost could be as low as $200 or up to $5,000+ for a typical 3 tank system. We do not know how many UST facilities operate unstaffed.

Do any other agencies regulate in this area? No.

If so, what agencies and what Administrative Code Sections apply? N/A

What alternatives to direct regulation are available to the agency in the regulating this within the area? Why were other alternatives not used? None available.

Does this rule contain a waiver provision? If not, why? No waiver provisions are included for operator training. Operator training is required under the federal Energy Policy Act of 2005 and must meet EPA guidance. The department did allow some discretion or waiver to the requirement for a certified groundwater professional to conduct UST closure sampling.

Likely areas of public comment:
Comments may be about in-line leak detector capable of shutting down submersible pump at unstaffed facilities and meeting the operator training requirement by deadline set forth in proposed rules.

Administrative Rules Coordinator

Room 11, State Capitol Building
Des Moines, Iowa 50319
515/281-0182